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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1959

No. 944

RUDY SALOMONS,

*Petitioner,*

*vs.*

THE PEOPLE OF THE STATE OF CALIFORNIA,

*Respondent.*

## BRIEF OF RESPONDENT IN OPPOSITION TO GRANTING OF WRIT OF CERTIORARI.

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## TABLE OF AUTHORITIES CITED

### CASES


| | PAGE |
|---|---|
| Carter v. Illinois, 329 U. S. 173, 91 L. Ed. 172 | 2 |
| Hoag v. New Jersey, 356 U. S. 464, 2 L. Ed. 2d 913 | 2 |
| Michel v. Louisiana, 350 U. S. 91, 100 L. Ed. 83 | 2 |
| People v. Caruso, 174 A. C. A. 677 | 3 |
| People v. Ottenstror, 127 Cal. App. 2d 104, 374 P. 2d 289 | 1 |
| United States v. Shailer, 202 F. 2d 590, cert. den. 337 U. S. 947, 98 L. Ed 1094 | 1 |


### STATUTE


| | |
|---|---|
| United States Constitution, Fourteenth Amendment | 1 |

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## BRIEF OF RESPONDENT IN OPPOSITION TO GRANTING OF WRIT OF CERTIORARI.

Petitioner is seeking to secure a hearing in this Court upon the basis that the failure to allow the withdrawal of his plea of guilty, as outlined in his petition, violated the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Petitioner's theory is defective, in that it neglects the established rule that an accused who seeks to set aside a plea of guilty must show good cause therefor, and that the granting or denial of such application rests in the sound discretion of the trial court. Further, the decision will not be disturbed on appeal unless an abuse of that discretion is clearly shown.

*United States v. Shailer*, 202 F. 2d 590, cert. denied, 337 U. S. 947, 98 L. Ed. 1094;

*People v. Ottenstror*, 127 Cal. App. 2d 104, 374 P. 2d 289.

In the instant case no affidavit was filed by petitioner's former counsel to corroborate the hearsay statements attributed to him in petitioner's affidavit. Significantly, petitioner's affidavit omitted any allegation that his counsel, in reliance on the purported statements of the medical officer, advised petitioner to plead guilty. Likewise, never was there any claim that the City Attorney or the court had ever approached, or been approached by petitioner in the matter of the expectant sentence if a plea of guilty were entered.

The trial court properly had before it the Probation Officer's Report [Ex. "C" of Petitioner's Notice to Set Aside Judgment and a Plea of Guilty] when petitioner was sentenced. This Report controverted certain factual issues of petitioner's affidavit, allowing the court to justly conclude that the affidavits of these interested parties lacked credibility and it thereby refused to exercise the discretion necessary to permit a plea of guilty to be withdrawn.

Where a defendant in a criminal case alleges a deprivation of a constitutional right, the decision of the local court must be judged on the basis of the scope of the remedy provided and what the court properly had before it in such proceedings.

*Carter v. Illinois*, 329 U. S. 173, 91 L. Ed. 172.

In the instant case, while the findings of the state courts are not conclusive upon this court they are entitled to great weight and respect (*Michel v. Louisiana*, 350 U. S. 91, 100 L. Ed. 83) and should not be overruled where, in the exercise of its discretion, the state court ruled against petitioner on fairly debatable factual issues. (*Hoag v. New Jersey*, 356 U. S. 464, 2 L. Ed. 2d 913.)

There was no abuse of discretion to shock the conscience or be intolerable in our system of law, but instead petitioner's acts bring him within *People v. Caruso*, 174 A. C. A. 677, .... P. 2d ....., which held that a defendant charged with an offense cannot be permitted to gamble on the anticipated result of a voluntary plea of guilty and, when disappointed at the outcome, re-establish a right to trial.

## Conclusion.

The petition for writ of certiorari does not disclose a clear and convincing showing that there has been a violation of petitioner's rights under the Federal Constitution, nor does it show that the highest court of the State of California has decided a federal question in conflict with applicable decisions of this Court, or decided a federal question of substance not theretofore determined by this Court.

Respondent prays that the petition be denied.

Respectfully submitted,

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